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8 **BEFORE THE**
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **FOR THE BUREAU OF AUTOMOTIVE REPAIR**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. 79/09-03

12 RHO'S AUTO REPAIR
JAMES MYONG HWAN RHO,
13 a.k.a. MYONG RHO, OWNER
1520 W. Cowles Street
14 Long Beach, CA 90813

A C C U S A T I O N

15 Automotive Repair Dealer Reg. No. ARD 156930
Smog Check Station License No. RC 156930
16 Official Lamp Station License No. LS 156930
Official Brake Station License No. BS 156930

SMOG CHECK

17 and

18 MYONG RHO
19 5937 Los Nietos Street
Buena Park, CA 90620

20 Advanced Emission Specialist Technician License
21 No. EA 111627
Lamp Adjuster License No. LA 111627
22 Brake Adjuster License No. BA 111627

23 Respondents.
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1 Complainant alleges:

2 **PARTIES**

3 1. Sherry Mehl ("Complainant") brings this Accusation solely in her official
4 capacity as the Chief of the Bureau of Automotive Repair ("Bureau"), Department of Consumer
5 Affairs.

6 **Rho's Auto Repair:**

7 2. In or about 1990, the Director of Consumer Affairs ("Director") issued
8 Automotive Repair Dealer Registration ("registration") Number ARD 156930 (formerly AL
9 156930) to James Myong Hwan Rho, also known as Myong Rho ("Respondent"), owner of Rho's
10 Auto Repair. On October 4, 1999, Respondent's registration was revoked; however, the
11 revocation was stayed and Respondent was placed on probation for a period of three years under
12 terms and conditions, as set forth in paragraph 67 below. Respondent's registration was also
13 suspended for ten days. Respondent's registration was in full force and effect at all times
14 relevant to the charges brought herein and will expire on November 30, 2008, unless renewed.

15 3. On or about December 20, 1990, the Director issued Smog Check Station
16 License Number RC 156930 (formerly RL 156930) to Respondent. Respondent's smog check
17 station license was in full force and effect at all times relevant to the charges brought herein and
18 will expire on November 30, 2008, unless renewed.

19 4. On or about December 20, 1990, the Director issued Official Lamp Station
20 License Number LS 156930 (formerly LL 156930) to Respondent. On October 4, 1999,
21 Respondent's lamp station license was revoked; however, the revocation was stayed and
22 Respondent was placed on probation for a period of three years under terms and conditions, as
23 set forth in paragraph 67 below. Respondent's lamp station license was also suspended for ten
24 days. Respondent's lamp station license was in full force and effect at all times relevant to the
25 charges brought herein and will expire on November 30, 2008, unless renewed.

26 5. On or about December 20, 1990, the Director issued Official Brake Station
27 License Number BS 156930 (formerly BL 156930) to Respondent. On October 4, 1999,
28 Respondent's brake station license was revoked; however, the revocation was stayed and

1 Respondent was placed on probation for a period of three years under terms and conditions, as
2 set forth in paragraph 67 below. Respondent's brake station license was also suspended for ten
3 days. Respondent's brake station license was in full force and effect at all times relevant to the
4 charges brought herein and will expire on November 30, 2008, unless renewed.

5 **Myong Rho:**

6 6. In or about 1996, the Director issued Advanced Emission Specialist
7 Technician License Number EA 111627 to Respondent. Respondent's advanced emission
8 specialist technician license was in full force and effect at all times relevant to the charges
9 brought herein and will expire on June 30, 2008, unless renewed.

10 7. In or about 1998, the Director issued Lamp Adjuster License Number
11 LA 111627 (formerly RY 111627) to Respondent. On October 4, 1999, Respondent's lamp
12 adjuster license was revoked; however, the revocation was stayed and Respondent was placed on
13 probation for a period of three years under terms and conditions, as set forth in paragraph 67
14 below. Respondent's lamp adjuster license was also suspended for ten days. Respondent's lamp
15 adjuster license was in full force and effect at all times relevant to the charges brought herein and
16 will expire on June 30, 2009, unless renewed.

17 8. In or about 1998, the Director issued Brake Adjuster License Number
18 BA 111627 (formerly JC 111627) to Respondent. On October 4, 1999, Respondent's brake
19 adjuster license was revoked; however, the revocation was stayed and Respondent was placed on
20 probation for a period of three years under terms and conditions, as set forth in paragraph 67
21 below. Respondent's brake adjuster license was also suspended for ten days. Respondent's
22 brake adjuster license was in full force and effect at all times relevant to the charges brought
23 herein and will expire on June 30, 2008, unless renewed.

24 **JURISDICTION**

25 9. Business and Professions Code ("Bus. & Prof. Code") section 9884.7
26 provides that the Director may invalidate an automotive repair dealer registration.

27 10. Bus. & Prof. Code section 9884.13 provides, in pertinent part, that the
28 expiration of a valid registration shall not deprive the Director of jurisdiction to proceed with a

1 disciplinary proceeding against an automotive repair dealer or to render a decision invalidating a
2 registration temporarily or permanently.

3 11. Bus. & Prof. Code section 9889.1 provides, in pertinent part, that the
4 Director may suspend or revoke any license issued under Articles 5 and 6 (commencing with
5 section 9887.1) of the Automotive Repair Act.

6 12. Bus. & Prof. Code section 9889.7 provides, in pertinent part, that the
7 expiration or suspension of a license by operation of law or by order or decision of the Director
8 or a court of law, or the voluntary surrender of a license shall not deprive the Director of
9 jurisdiction to proceed with any disciplinary proceedings.

10 13. Health and Safety Code ("Health & Saf. Code") section 44002 provides, in
11 pertinent part, that the Director has all the powers and authority granted under the Automotive
12 Repair Act for enforcing the Motor Vehicle Inspection Program.

13 14. Health & Saf. Code section 44072.6 provides, in pertinent part, that the
14 expiration or suspension of a license by operation of law, or by order or decision of the Director
15 of Consumer Affairs, or a court of law, or the voluntary surrender of the license shall not deprive
16 the Director of jurisdiction to proceed with disciplinary action.

17 STATUTORY PROVISIONS

18 15. Bus. & Prof. Code section 9884.7 states, in pertinent part:

19 (a) The director, where the automotive repair dealer cannot show there
20 was a bona fide error, may refuse to validate, or may invalidate temporarily or
21 permanently, the registration of an automotive repair dealer for any of the
22 following acts or omissions related to the conduct of the business of the
automotive repair dealer, which are done by the automotive repair dealer or any
automotive technician, employee, partner, officer, or member of the automotive
repair dealer.

23 (1) Making or authorizing in any manner or by any means whatever any
24 statement written or oral which is untrue or misleading, and which is known, or
25 which by the exercise of reasonable care should be known, to be untrue or
misleading.

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27 (4) Any other conduct which constitutes fraud.

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1 (c) Notwithstanding subdivision (b), the director may refuse to
2 validate, or may invalidate temporarily or permanently, the registration
3 for all places of business operated in this state by an automotive repair
4 dealer upon a finding that the automotive repair dealer has, or is, engaged
5 in a course of repeated and willful violations of this chapter, or regulations
6 adopted pursuant to it.

7 16. Bus. & Prof. Code section 9889.3 states, in pertinent part:

8 The director may suspend, revoke, or take other disciplinary action
9 against a license as provided in this article [Article 7 (commencing with
10 section 9889.1) of the Automotive Repair Act] if the licensee or any partner,
11 officer, or director thereof:

12 (a) Violates any section of the Business and Professions Code
13 which relates to his or her licensed activities.

14

15 (c) Violates any of the regulations promulgated by the director
16 pursuant to this chapter.

17 (d) Commits any act involving dishonesty, fraud, or deceit
18 whereby another is injured.

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20 (h) Violates or attempts to violate the provisions of this chapter
21 relating to the particular activity for which he or she is licensed . . .

22 17. Bus. & Prof. Code section 9889.16 states:

23 Whenever a licensed adjuster in a licensed station upon an inspection
24 or after an adjustment, made in conformity with the instructions of the
25 bureau, determines that the lamps or the brakes upon any vehicle conform with
26 the requirements of the Vehicle Code, he shall, when requested by the owner
27 or driver of the vehicle, issue a certificate of adjustment on a form prescribed
28 by the director, which certificate shall contain the date of issuance, the make
and registration number of the vehicle, the name of the owner of the vehicle,
and the official license of the station.

18. Bus. & Prof. Code section 9889.22 states:

19 The willful making of any false statement or entry with regard to a
20 material matter in any oath, affidavit, certificate of compliance or
21 noncompliance, or application form which is required by this chapter [the
22 Automotive Repair Act] or Chapter 5 (commencing with Section 44000)
23 of Part 5 of Division 26 of the Health and Safety Code constitutes perjury
24 and is punishable as provided in the Penal Code.

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19. Bus. & Prof. Code section 9889.9 states that “[w]hen any license has been revoked or suspended following a hearing under the provisions of this article [Article 7 (commencing with section 9889.1) of the Automotive Repair Act], any additional license issued under Articles 5 and 6 of this chapter in the name of the licensee may be likewise revoked or suspended by the director.”

20. Bus. & Prof. Code section 22, subdivision (a), states:

"Board" as used in any provision of this Code, refers to the board in which the administration of the provision is vested, and unless otherwise expressly provided, shall include "bureau," "commission," "committee," "department," "division," "examining committee," "program," and "agency."

21. Bus. & Prof. Code section 477, subdivision (b), states, in pertinent part, that a “license” includes “registration” and “certificate.”

22. Health & Saf. Code section 44072.2 states, in pertinent part:

The director may suspend, revoke, or take other disciplinary action against a license as provided in this article if the licensee, or any partner, officer, or director thereof, does any of the following:

(a) Violates any section of this chapter [the Motor Vehicle Inspection Program (Health and Saf. Code § 44000, et seq.)] and the regulations adopted pursuant to it, which related to the licensed activities.

• • • •

(c) Violates any of the regulations adopted by the director pursuant to this chapter.

(d) Commits any act involving dishonesty, fraud, or deceit whereby another is injured . . .

23. Health & Saf. Code section 44072.8 states that when a license has been revoked or suspended following a hearing under this article, any additional license issued under this chapter in the name of the licensee may be likewise revoked or suspended by the director.

Cost Recovery

24. Bus. & Prof. Code section 125.3 provides, in pertinent part, that a Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

1 VIDEOTAPE SURVEILLANCE OF AUGUST 6, 2007

2 25. On August 6, 2007, a representative of the Bureau conducted a videotape
3 surveillance operation of Respondent's facility. The surveillance videotape and information
4 obtained from the Bureau's vehicle information database ("VID") revealed that Respondent
5 issued electronic smog Certificate of Compliance #VJ326072C, certifying that between 1647 and
6 1656 hours, he had tested and inspected a 2003 Toyota truck, license #7E54377, and that the
7 vehicle was in compliance with applicable laws and regulations. In fact, Respondent conducted
8 the inspection on the 2003 Toyota truck using clean-piping methods¹, resulting in the issuance of
9 a fraudulent certificate of compliance for the vehicle (Respondent used the exhaust emissions of
10 another vehicle, a Toyota truck of an unknown year, license #8D12518, during the smog
11 inspection).

12 26. The representative later determined that Respondent was issuing brake and
13 lamp certificates during the time of the August 6, 2007, surveillance, as well as the surveillance
14 operations of August 16, 2007, and August 21, 2007, as set forth below.

15 27. On September 11, 2007, the representative went to Respondent's facility
16 and obtained invoices, brake and lamp certificates, and vehicle inspection reports issued by
17 Respondent during the month of August 2007.

18 28. On September 17, 2007, the representative returned to the facility and
19 obtained additional lamp certificates. The representative spoke with Respondent regarding his
20 procedure for issuing a brake certificate to a vehicle. Respondent stated that he removes all of
21 the wheels from each vehicle, performs a visual inspection of the brake components, measures
22 the brake rotor/brake drum thickness and brake pad/brake lining thickness, and notes the
23 measurements on the invoice for the vehicle. Respondent also stated that he performs a road test
24 that measures how many feet are required to stop the vehicle at 20 miles per hour (mph).

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27 1. Pursuant to California Code of Regulations, title 16, section 3340.1, "clean piping" means the use of a
28 sample of the exhaust emissions of one vehicle in order to cause the Test Analyzer System or Emission Inspection
System to issue a certificate of compliance for another vehicle.

29. A review of the videotape of August 6, 2007, and the brake certificates issued by Respondent revealed the following: Respondent certified that he performed the applicable inspections of the brake system components on the vehicles identified below as specified by the Bureau and the vehicle manufacturer, and that each vehicle required 20 feet to stop at 20 mph. In fact, Respondent did not remove the wheels from any of the vehicles to measure the brake rotor/drum thickness or brake pad/lining thickness, did not perform a visual inspection of the brake systems on the vehicles, and did not road test any of the vehicles.

Time Vehicle Observed at Facility	Vehicle Certified & VIN No.	Brake Certificate Number
1. 0916 - 0946 hours	2004 Nissan; 3NICB51D64L482717	BC521444
2. 0945 - 1026 hours	2001 Lincoln; 5LMFU28R21LJ18539	BC521445
3. 1100 - 1127 hours	2002 Buick; 3G5DA03E22S572132	BC521446
4. 1249 - 1306 hours	2001 Volkswagen; 3VWSK69M01M137558	BC521447
5. 1310 - 1421 hours	2005 Chevrolet; KL1TD526X5B338394	BC521448
6. 1343 - 1452 hours	2000 Honda; 1HGCG1653YA028609	BC521449

FIRST CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

30. Respondent's registration is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized statements which he knew or in the exercise of reasonable care should have known to be untrue or misleading, as follows:

a. Respondent certified under penalty of perjury on the vehicle inspection report for the 2003 Toyota truck, identified in paragraph 25 above, that the vehicle had passed inspection and was in compliance with applicable laws and regulations. In fact, Respondent conducted the inspection using clean-piping methods in order to issue a certificate for the vehicle and did not test or inspect the vehicle as required by Health & Saf. Code section 44012.

b. Respondent certified under penalty of perjury on the brake certificates for vehicles 1 through 6, identified in paragraph 29 above, that the applicable inspections were performed of the brake systems on the vehicles as specified by the Bureau and the vehicle

1 manufacturer. In fact, Respondent failed to remove the wheels from any of the vehicles to
2 measure the brake rotor/drum thickness or brake pad/lining thickness, and failed to perform a
3 visual inspection of the brake systems on the vehicles.

4 c. Respondent certified under penalty of perjury on the brake certificates for
5 vehicles 1 through 6, identified in paragraph 29 above, that each vehicle had a stopping distance
6 of 20 feet from a speed of 20 miles per hour as a result of a road-test when, in fact, Respondent
7 failed to road-test the vehicles.

8 d. Respondent represented on the invoices for vehicles 1 through 6, identified
9 in paragraph 29 above, that measurements were taken of the brake rotor/brake drum thickness
10 and brake pad/brake lining thickness on the vehicles. In fact, Respondent failed to remove the
11 wheels from any of the vehicles.

12 **SECOND CAUSE FOR DISCIPLINE**

13 **(Fraud)**

14 31. Respondent's registration is subject to disciplinary action pursuant to Bus.
15 & Prof. Code section 9884.7, subdivision (a)(4), in that Respondent committed acts which
16 constitute fraud, as follows:

17 a. Respondent issued an electronic smog certificate of compliance for the
18 2003 Toyota truck, identified in paragraph 25 above, without performing a bona fide inspection
19 of the emission control devices and systems on the vehicle, thereby depriving the People of the
20 State of California of the protection afforded by the Motor Vehicle Inspection Program.

21 b. Respondent charged the owners of vehicles 1 through 6, identified in
22 paragraph 29 above, for performing the applicable inspections of the brake systems on the
23 vehicles, and issued brake certificates representing that he had performed the inspections as
24 specified by the Bureau and in accordance with the Vehicle Code. In fact, Respondent failed to
25 conduct the inspections in compliance with Bureau Regulations or the Vehicle Code, as set forth
26 in subparagraphs 30 (b) and (c) above.

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1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Failure to Comply with the Bus. & Prof. Code)**

3 32. Respondent's registration is subject to disciplinary action pursuant to Bus.
4 & Prof. Code section 9884.7, subdivision (a)(6), in that Respondent failed in a material respect to
5 comply with provisions of that Code, as follows:

- 6 a. **Section 9889.16:** Respondent issued brake certificates for vehicles 1
7 through 6, identified in paragraph 29 above, when the vehicles had not
8 been inspected in compliance with Bureau regulations or the requirements
9 of the Vehicle Code.
- 10 b. **Section 9889.22:** Respondent willfully made false statements or entries
11 on the brake certificates for vehicles 1 through 6, identified in paragraph
12 29 above, as set forth in subparagraphs 30 (b) and (c).

13 **FOURTH CAUSE FOR DISCIPLINE**

14 **(Violations of Regulations)**

15 33. Respondent's registration is subject to disciplinary action pursuant to Bus.
16 & Prof. Code section 9884.7, subdivision (a)(6), in that Respondent failed in a material respect to
17 comply with provisions of California Code of Regulations, title 16, as follows:

- 18 a. **Section 3305, subdivision (a):** Respondent failed to perform the
19 inspections of the brake systems on vehicles 1 through 6, identified in
20 paragraph 29 above, in accordance with the specifications, instructions,
21 and directives issued by the Bureau and the vehicle manufacturer.
- 22 b. **Section 3321, subdivision (c)(2):** Respondent issued brake certificates as
23 to vehicles 1 through 6, identified in paragraph 29 above, when the brake
24 systems on the vehicles had not been tested or inspected, as set forth in
25 subparagraphs 30 (a) and (b) above.

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1 **FIFTH CAUSE FOR DISCIPLINE**

2 **(Failure to Comply with the Bus. & Prof. Code)**

3 34. Respondent's official brake station license is subject to disciplinary action
4 pursuant to Bus. & Prof. Code sections 9889.3, subdivision (a), and 9889.3, subdivision (h), in
5 that Respondent violated the provisions of Bus. & Prof. Code sections 9889.16 and 9889.22
6 relating to Respondent's licensed activities, as set forth in paragraph 32 above.

7 **SIXTH CAUSE FOR DISCIPLINE**

8 **(Failure to Comply with Regulations)**

9 35. Respondent's official brake station license is subject to disciplinary action
10 pursuant to Bus. & Prof. Code section 9889.3, subdivision (c), in that Respondent failed to
11 comply with the provisions of California Code of Regulations, title 16, sections 3305,
12 subdivision (a), and 3321, subdivision (c)(2), as set forth in paragraph 33 above.

13 **SEVENTH CAUSE FOR DISCIPLINE**

14 **(Dishonesty, Fraud, or Deceit)**

15 36. Respondent's official brake station license is subject to disciplinary action
16 pursuant to Bus. & Prof. Code section 9889.3, subdivision (d), in that Respondent committed
17 acts involving dishonesty, fraud, or deceit whereby another was injured, as set forth in paragraph
18 31 above.

19 **EIGHTH CAUSE FOR DISCIPLINE**

20 **(Failure to Comply with the Code)**

21 37. Respondent's brake adjuster license is subject to disciplinary action
22 pursuant to Bus. & Prof. Code sections 9889.3, subdivision (a), and 9889.3, subdivision (h), in
23 that Respondent violated the provisions of Bus. & Prof. Code sections 9889.16 and 9889.22
24 relating to his licensed activities, as set forth in paragraph 32 above.

25 **NINTH CAUSE FOR DISCIPLINE**

26 **(Violations of Regulations)**

27 38. Respondent's brake adjuster license is subject to disciplinary action
28 pursuant to Bus. & Prof. Code section 9889.3, subdivision (c), in that Respondent failed to

1 comply with the provisions of California Code of Regulations, title 16, sections 3305,
2 subdivision (a), and 3321, subdivision (c)(2), as set forth in paragraph 33 above.

3 **TENTH CAUSE FOR DISCIPLINE**

4 **(Violations of the Motor Vehicle Inspection Program)**

5 39. Respondent's smog check station license is subject to disciplinary action
6 pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed in a
7 material respect to comply with provisions of that Code, as follows:

- 8 a. **Section 44012:** Respondent failed to perform the emission control tests
9 on the 2003 Toyota truck, identified in paragraph 25 above, in accordance
10 with procedures prescribed by the department.
11 b. **Section 44015:** Respondent issued an electronic smog certificate of
12 compliance for the 2003 Toyota truck, identified in paragraph 25 above,
13 without properly testing and inspecting the vehicle to determine if it was in
14 compliance with Health & Saf. Code section 44012.

15 **ELEVENTH CAUSE FOR DISCIPLINE**

16 **(Failure to Comply with Regulations Pursuant**
17 **to the Motor Vehicle Inspection Program)**

18 40. Respondent's smog check station license is subject to disciplinary action
19 pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed in a
20 material respect to comply with provisions of California Code of Regulations, title 16, as
21 follows:

- 22 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently
23 issued an electronic smog certificate of compliance for the 2003 Toyota
24 truck, identified in paragraph 25 above.
25 b. **Section 3340.35, subdivision (c):** Respondent issued an electronic smog
26 certificate of compliance for the 2003 Toyota truck, identified in paragraph
27 25 above, even though the vehicle had not been inspected in accordance
28 with section 3340.42.

- 1 c. **Section 3340.41, subdivision (c):** Respondent entered false information
2 into the emission inspection system by entering vehicle identification
3 information or emission control system identification data for a vehicle
4 other than the one being tested.
- 5 d. **Section 3340.42:** Respondent failed to conduct the required smog tests on
6 the 2003 Toyota truck, identified in paragraph 25 above, in accordance
7 with the Bureau's specifications.

8 **TWELFTH CAUSE FOR DISCIPLINE**

9 **(Dishonesty, Fraud or Deceit)**

10 41. Respondent's smog check station license is subject to disciplinary action
11 pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed a
12 dishonest, fraudulent, or deceitful act whereby another is injured, as follows: Respondent issued
13 an electronic smog certificate of compliance for the 2003 Toyota truck, identified in paragraph 25
14 above, without performing a bona fide inspection of the emission control devices and systems on
15 the vehicle, thereby depriving the People of the State of California of the protection afforded by
16 the Motor Vehicle Inspection Program.

17 **THIRTEENTH CAUSE FOR DISCIPLINE**

18 **(Violations of the Motor Vehicle Inspection Program)**

19 42. Respondent's advanced emission specialist technician license is subject to
20 disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that
21 Respondent failed in a material respect to comply with provisions of that Code, as follows:

- 22 a. **Section 44012:** Respondent failed to perform the emission control tests
23 on the 2003 Toyota truck, identified in paragraph 25 above, in accordance
24 with procedures prescribed by the department.
- 25 b. **Section 44059:** Respondent willfully made false entries on the vehicle
26 inspection report, as set forth in subparagraph 30 (a) above.

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1 **FOURTEENTH CAUSE FOR DISCIPLINE**

2 **(Failure to Comply with Regulations Pursuant**
3 **to the Motor Vehicle Inspection Program)**

4 43. Respondent's advanced emission specialist technician license is subject to
5 disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in
6 that Respondent failed in a material respect to comply with provisions of California Code of
7 Regulations, title 16, as follows:

- 8 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently
9 issued an electronic smog certificate of compliance for the 2003 Toyota
10 truck, identified in paragraph 25 above.
- 11 b. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test
12 the 2003 Toyota truck, identified in paragraph 25 above, in accordance
13 with Health & Saf. Code sections 44012 and 44035, and California Code
14 of Regulations, title 16, section 3340.42.
- 15 c. **Section 3340.41, subdivision (c):** Respondent entered false information
16 into the emission inspection system by entering vehicle identification
17 information or emission control system identification data for a vehicle
18 other than the one being tested.
- 19 d. **Section 3340.42:** Respondent failed to conduct the required smog tests on
20 the 2003 Toyota truck, identified in paragraph 25 above, in accordance
21 with the Bureau's specifications.

22 **FIFTEENTH CAUSE FOR DISCIPLINE**

23 **(Dishonesty, Fraud or Deceit)**

24 44. Respondent's advanced emission specialist technician license is subject to
25 disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that
26 Respondent committed a dishonest, fraudulent, or deceitful act whereby another is injured, as
27 follows: Respondent issued an electronic smog certificate of compliance for the 2003 Toyota
28 truck, identified in paragraph 25 above, without performing a bona fide inspection of the

1 emission control devices and systems on the vehicle, thereby depriving the People of the State of
2 California of the protection afforded by the Motor Vehicle Inspection Program.

3 **VIDEOTAPE SURVEILLANCE OF AUGUST 16, 2007**

4 45. Complainant incorporates by reference as though fully set forth herein the
5 allegations contained in paragraphs 26 through 28 above.

6 46. On August 16, 2007, the Bureau representative conducted a videotape
7 surveillance operation of Respondent's facility. A review of the surveillance videotape and the
8 brake certificates issued by Respondent revealed as follows: Respondent certified that he
9 performed the applicable inspections of the brake system components on the vehicles identified
10 below as specified by the Bureau and the vehicle manufacturer, and that each vehicle required 20
11 feet to stop at 20 mph. In fact, Respondent did not remove the wheels from any of the vehicles to
12 measure the brake rotor/drum thickness or brake pad/lining thickness, did not perform a visual
13 inspection of the brake systems on the vehicles, and did not road test any of the vehicles.

Time Vehicle Observed at Facility	Vehicle Certified & VIN or License No.	Brake Certificate Number
1. 1329 - 1408 hours	2006 Toyota; JTEZU14R360082935	BC533999
2. 1543 - 1549 hours	2000 Pontiac; 4MMZ714	BC534000

18 **SIXTEENTH CAUSE FOR DISCIPLINE**

19 **(Untrue or Misleading Statements)**

20 47. Respondent's registration is subject to disciplinary action pursuant to Bus.
21 & Prof. Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized
22 statements which he knew or in the exercise of reasonable care should have known to be untrue
23 or misleading, as follows:

24 a. Respondent certified under penalty of perjury on the brake certificates for
25 vehicles 1 and 2, identified in paragraph 46 above, that the applicable inspections were
26 performed of the brake systems on the vehicles as specified by the Bureau and the vehicle
27 manufacturer. In fact, Respondent failed to remove the wheels from the vehicles to measure the

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1 brake rotor/drum thickness or brake pad/lining thickness and failed to perform a visual inspection
2 of the brake systems on the vehicles.

3 b. Respondent certified under penalty of perjury on the brake certificates for
4 vehicles 1 and 2, identified in paragraph 46 above, that the vehicles had a stopping distance of 20
5 feet from a speed of 20 miles per hour as a result of a road-test when, in fact, Respondent failed
6 to road-test the vehicles.

7 c. Respondent represented on the invoices for vehicles 1 and 2, identified in
8 paragraph 46 above, that measurements were taken of the brake rotor/brake drum thickness and
9 brake pad/brake lining thickness on the vehicles. In fact, Respondent failed to remove the wheels
10 from the vehicles.

11 **SEVENTEENTH CAUSE FOR DISCIPLINE**

12 **(Fraud)**

13 48. Respondent's registration is subject to disciplinary action pursuant to Bus.
14 & Prof. Code section 9884.7, subdivision (a)(4), in that Respondent committed acts which
15 constitute fraud, as follows: Respondent charged the owners of vehicles 1 and 2, identified in
16 paragraph 46 above, for performing the applicable inspections of the brake systems on the
17 vehicles, and issued brake certificates representing that he had performed the inspections as
18 specified by the Bureau and in accordance with the Vehicle Code. In fact, Respondent failed to
19 conduct the inspections in compliance with Bureau Regulations or the Vehicle Code, as set forth
20 in subparagraphs 47 (a) and (b) above.

21 **EIGHTEENTH CAUSE FOR DISCIPLINE**

22 **(Failure to Comply with the Bus. & Prof. Code)**

23 49. Respondent's registration is subject to disciplinary action pursuant to Bus.
24 & Prof. Code section 9884.7, subdivision (a)(6), in that Respondent failed in a material respect to
25 comply with provisions of that Code, as follows:

26 a. **Section 9889.16:** Respondent issued brake certificates for vehicles 1
27 and 2, identified in paragraph 46 above, when the vehicles had not

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1 been inspected in compliance with Bureau regulations or the requirements
2 of the Vehicle Code.

- 3 b. **Section 9889.22:** Respondent willfully made false statements or entries
4 on the brake certificates for vehicles 1 and 2, identified in paragraph
5 46 above, as set forth in subparagraphs 47 (a) and (b).

6 **NINETEENTH CAUSE FOR DISCIPLINE**

7 **(Violations of Regulations)**

8 50. Respondent's registration is subject to disciplinary action pursuant to Bus.
9 & Prof. Code section 9884.7, subdivision (a)(6), in that Respondent failed in a material respect to
10 comply with provisions of California Code of Regulations, title 16, as follows:

- 11 a. **Section 3305, subdivision (a):** Respondent failed to perform the
12 inspections of the brake systems on vehicles 1 and 2, identified in
13 paragraph 46 above, in accordance with the specifications, instructions,
14 and directives issued by the Bureau and the vehicle manufacturer.
15 b. **Section 3321, subdivision (c)(2):** Respondent issued brake certificates as
16 to vehicles 1 and 2, identified in paragraph 46 above, when the brake
17 systems on the vehicles had not been tested or inspected, as set forth in
18 subparagraphs 47 (a) and (b) above.

19 **TWENTIETH CAUSE FOR DISCIPLINE**

20 **(Failure to Comply with the Bus. & Prof. Code)**

21 51. Respondent's official brake station license is subject to disciplinary action
22 pursuant to Bus. & Prof. Code sections 9889.3, subdivision (a), and 9889.3, subdivision (h), in
23 that Respondent violated the provisions of Bus. & Prof. Code sections 9889.16 and 9889.22
24 relating to Respondent's licensed activities, as set forth in paragraph 49 above.

25 **TWENTY-FIRST CAUSE FOR DISCIPLINE**

26 **(Failure to Comply with Regulations)**

27 52. Respondent's official brake station license is subject to disciplinary action
28 pursuant to Bus. & Prof. Code section 9889.3, subdivision (c), in that Respondent failed to

1 comply with the provisions of California Code of Regulations, title 16, sections 3305,
2 subdivision (a), and 3321, subdivision (c)(2), as set forth in paragraph 50 above.

3 **TWENTY-SECOND CAUSE FOR DISCIPLINE**

4 **(Dishonesty, Fraud, or Deceit)**

5 53. Respondent's official brake station license is subject to disciplinary action
6 pursuant to Bus. & Prof. Code section 9889.3, subdivision (d), in that Respondent committed
7 acts involving dishonesty, fraud, or deceit whereby another was injured, as set forth in paragraph
8 48 above.

9 **TWENTY-THIRD CAUSE FOR DISCIPLINE**

10 **(Failure to Comply with the Code)**

11 54. Respondent's brake adjuster license is subject to disciplinary action
12 pursuant to Bus. & Prof. Code sections 9889.3, subdivision (a), and 9889.3, subdivision (h), in
13 that Respondent violated the provisions of Bus. & Prof. Code sections 9889.16 and 9889.22
14 relating to his licensed activities, as set forth in paragraph 49 above.

15 **TWENTY-FOURTH CAUSE FOR DISCIPLINE**

16 **(Violations of Regulations)**

17 55. Respondent's brake adjuster license is subject to disciplinary action
18 pursuant to Bus. & Prof. Code section 9889.3, subdivision (c), in that Respondent failed to
19 comply with the provisions of California Code of Regulations, title 16, sections 3305,
20 subdivision (a), and 3321, subdivision (c)(2), as set forth in paragraph 50 above.

21 **VIDEOTAPE SURVEILLANCE OF AUGUST 21, 2007**

22 56. Complainant incorporates by reference as though fully set forth herein the
23 allegations contained in paragraphs 26 through 28 above.

24 57. On August 21, 2007, the Bureau representative conducted a videotape
25 surveillance operation of Respondent's facility. A review of the surveillance videotape and the
26 brake certificates issued by Respondent revealed as follows: Respondent certified that he
27 performed the applicable inspections of the brake system components on the vehicles identified
28 below as specified by the Bureau and the vehicle manufacturer, and that each vehicle required 20

feet to stop at 20 mph. In fact, Respondent did not remove the wheels from any of the vehicles to measure the brake rotor/drum thickness or brake pad/lining thickness, did not perform a visual inspection of the brake systems on the vehicles, and did not road test any of the vehicles.

Time Vehicle Observed at Facility	Vehicle Certified & VIN or License No.	Brake Certificate Number
1. 1115 - 1139 hours	2002 Jeep; 1J4GW58N62C304651	BC534010
2. 1144 - 1205 hours	2001 Kia; License #5LKG640	BC534011
3. 1145 - 1230 hours	2005 Nissan; 1N4AL11D15N478477	BC534012

TWENTY-FIFTH CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

58. Respondent's registration is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized statements which he knew or in the exercise of reasonable care should have known to be untrue or misleading, as follows:

a. Respondent certified under penalty of perjury on the brake certificates for vehicles 1 through 3, identified in paragraph 57 above, that the applicable inspections were performed of the brake systems on the vehicles as specified by the Bureau and the vehicle manufacturer. In fact, Respondent failed to remove the wheels from the vehicles to measure the brake rotor/drum thickness or brake pad/lining thickness and failed to perform a visual inspection of the brake systems on the vehicles.

b. Respondent certified under penalty of perjury on the brake certificates for vehicles 1 through 3, identified in paragraph 57 above, that the vehicles had a stopping distance of 20 feet from a speed of 20 miles per hour as a result of a road-test when, in fact, Respondent failed to road-test the vehicles.

c. Respondent represented on the invoices for vehicles 1 through 3, identified in paragraph 57 above, that measurements were taken of the brake rotor/brake drum thickness and brake pad/brake lining thickness on the vehicles. In fact, Respondent failed to remove the wheels from the vehicles.

1 **TWENTY-SIXTH CAUSE FOR DISCIPLINE**

2 **(Fraud)**

3 59. Respondent's registration is subject to disciplinary action pursuant to Bus.
4 & Prof. Code section 9884.7, subdivision (a)(4), in that Respondent committed acts which
5 constitute fraud, as follows: Respondent charged the owners of vehicles 1 through 3, identified
6 in paragraph 57 above, for performing the applicable inspections of the brake systems on the
7 vehicles, and issued brake certificates representing that he had performed the inspections as
8 specified by the Bureau and in accordance with the Vehicle Code. In fact, Respondent failed to
9 conduct the inspections in compliance with Bureau Regulations or the Vehicle Code, as set forth
10 in subparagraphs 58 (a) and (b) above.

11 **TWENTY-SEVENTH CAUSE FOR DISCIPLINE**

12 **(Failure to Comply with the Bus. & Prof. Code)**

13 60. Respondent's registration is subject to disciplinary action pursuant to Bus.
14 & Prof. Code section 9884.7, subdivision (a)(6), in that Respondent failed in a material respect to
15 comply with provisions of that Code, as follows:

- 16 a. **Section 9889.16:** Respondent issued brake certificates for vehicles 1
17 through 3, identified in paragraph 57 above, when the vehicles had not
18 been inspected in compliance with Bureau regulations or the requirements
19 of the Vehicle Code.
- 20 b. **Section 9889.22:** Respondent willfully made false statements or entries
21 on the brake certificates for vehicles 1 through 3, identified in paragraph
22 57 above, as set forth in subparagraphs 58 (a) and (b).

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1 **TWENTY-EIGHTH CAUSE FOR DISCIPLINE**

2 **(Violations of Regulations)**

3 61. Respondent's registration is subject to disciplinary action pursuant to Bus.
4 & Prof. Code section 9884.7, subdivision (a)(6), in that Respondent failed in a material respect to
5 comply with provisions of California Code of Regulations, title 16, as follows:

- 6 a. **Section 3305, subdivision (a)**: Respondent failed to perform the
7 inspections of the brake systems on vehicles 1 through 3, identified in
8 paragraph 57 above, in accordance with the specifications, instructions,
9 and directives issued by the Bureau and the vehicle manufacturer.
- 10 b. **Section 3321, subdivision (c)(2)**: Respondent issued brake certificates as
11 to vehicles 1 through 3, identified in paragraph 57 above, when the brake
12 systems on the vehicles had not been tested or inspected, as set forth in
13 subparagraphs 58 (a) and (b) above.

14 **TWENTY-NINTH CAUSE FOR DISCIPLINE**

15 **(Failure to Comply with the Bus. & Prof. Code)**

16 62. Respondent's official brake station license is subject to disciplinary action
17 pursuant to Bus. & Prof. Code sections 9889.3, subdivision (a), and 9889.3, subdivision (h), in
18 that Respondent violated the provisions of Bus. & Prof. Code sections 9889.16 and 9889.22
19 relating to Respondent's licensed activities, as set forth in paragraph 60 above.

20 **THIRTIETH CAUSE FOR DISCIPLINE**

21 **(Failure to Comply with Regulations)**

22 63. Respondent's official brake station license is subject to disciplinary action
23 pursuant to Bus. & Prof. Code section 9889.3, subdivision (c), in that Respondent failed to
24 comply with the provisions of California Code of Regulations, title 16, sections 3305,
25 subdivision (a), and 3321, subdivision (c)(2), as set forth in paragraph 61 above.

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1 **THIRTY-FIRST CAUSE FOR DISCIPLINE**

2 **(Dishonesty, Fraud, or Deceit)**

3 64. Respondent's official brake station license is subject to disciplinary action
4 pursuant to Bus. & Prof. Code section 9889.3, subdivision (d), in that Respondent committed
5 acts involving dishonesty, fraud, or deceit whereby another was injured, as set forth in paragraph
6 59 above.

7 **THIRTY-SECOND CAUSE FOR DISCIPLINE**

8 **(Failure to Comply with the Code)**

9 65. Respondent's brake adjuster license is subject to disciplinary action
10 pursuant to Bus. & Prof. Code sections 9889.3, subdivision (a), and 9889.3, subdivision (h), in
11 that Respondent violated the provisions of Bus. & Prof. Code sections 9889.16 and 9889.22
12 relating to his licensed activities, as set forth in paragraph 60 above.

13 **THIRTY-THIRD CAUSE FOR DISCIPLINE**

14 **(Violations of Regulations)**

15 66. Respondent's brake adjuster license is subject to disciplinary action
16 pursuant to Bus. & Prof. Code section 9889.3, subdivision (c), in that Respondent failed to
17 comply with the provisions of California Code of Regulations, title 16, sections 3305,
18 subdivision (a), and 3321, subdivision (c)(2), as set forth in paragraph 61 above.

19 **MATTERS IN AGGRAVATION**

20 67. To determine the degree of discipline, if any, to be assessed against
21 Respondent, Complainant alleges by way of aggravation, as follows: On September 2, 1999,
22 pursuant to the Proposed Decision of the Administrative Law Judge adopted as the Decision of
23 the Director in the disciplinary action titled *In the Matter of the Accusation Against: Rho's Auto*
24 *Repair, etc.*, Case No. 77/99-55, the Director revoked Respondent's registration, lamp and brake
25 station licenses, and lamp and brake adjuster licenses effective October 4, 1999. The revocations
26 were stayed and Respondent was placed on probation for a period of three years on terms and
27 conditions. Respondent's registration, lamp and brake station licenses, and lamp and brake
28 adjuster licenses were also suspended for ten days effective October 4, 1999.

68. The administrative law judge found that Respondent violated Bus. & Prof. Code sections 9884.7, subdivision (a)(1) (untrue or misleading statements), 9884.7, subdivision (a)(3) (failure to provide copy of the written estimate), 9884.7, subdivision (a)(4) (fraud), 9884.7, subdivision (a)(6) (failure to comply with Bus. & Prof. Code sections 9884.9, subdivision (a), 9889.16, and 9889.22), 9884.7, subdivision (a)(6) (failure to comply with California Code of Regulations, title 16, sections 3305, subdivision (a), 3316, subdivision (d)(2), 3316, subdivision (c)(2), and 3371), and 9889.3, subdivisions (a), (c), (d), and (h).

OTHER MATTERS

69. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the Director may refuse to validate, or may invalidate temporarily or permanently, the registrations for all places of business operated in this state by Respondent James Myong Hwan Rho, also known as Myong Rho, owner of Rho's Auto Repair, upon a finding that said Respondent has, or is, engaged in a course of repeated and willful violations of the laws and regulations pertaining to an automotive repair dealer.

70. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Station License Number RC 156930, issued to Respondent James Myong Hwan Rho, also known as Myong Rho, owner of Rho's Auto Repair, is revoked or suspended, any additional license issued under this chapter in the name of said licensee may be likewise revoked or suspended by the Director.

71. Pursuant to Bus. & Prof. Code section 9889.9, if Official Brake Station License Number BS 156930, issued to Respondent James Myong Hwan Rho, also known as Myong Rho, owner of Rho's Auto Repair, is revoked or suspended, any additional license issued under this chapter in the name of said licensee, including, but not limited to, Official Lamp Station License Number LS 156930, may be likewise revoked or suspended by the Director.

72. Pursuant to Health & Saf. Code section 44072.8, if Advanced Emission Specialist Technician License Number EA 111627, issued to Respondent James Myong Hwan Rho, also known as Myong Rho, is revoked or suspended, any additional license issued under this chapter in the name of said licensee may be likewise revoked or suspended by the Director.

73. Pursuant to Bus. & Prof. Code section 9889.9, if Brake Adjuster License Number BA 111627, issued to Respondent James Myong Hwan Rho, also known as Myong Rho, is revoked or suspended, any additional license issued under this chapter in the name of said licensee, including, but not limited to, Lamp Adjuster License Number LA 111627, may be likewise revoked or suspended by the Director.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Director of Consumer Affairs issue a decision:

1. Temporarily or permanently invalidating Automotive Repair Dealer Registration Number ARD 156930, issued to James Myong Hwan Rho, also known as Myong Rho, owner of Rho's Auto Repair;

2. Temporarily or permanently invalidating any other automotive repair dealer registration issued to James Myong Hwan Rho, also known as Myong Rho;

3. Revoking or suspending Smog Check Station License Number RC 156930, issued to James Myong Hwan Rho, also known as Myong Rho, owner of Rho's Auto Repair;

4. Revoking or suspending Advanced Emission Specialist Technician License Number EA 111627, issued to James Myong Hwan Rho, also known as Myong Rho;

5. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of James Myong Hwan Rho, also known as Myong Rho;

6. Revoking or suspending Official Brake Station License Number
BS 156930, issued to James Myong Hwan Rho, also known as Myong Rho, owner of Rho's Auto
Repair;

7. Revoking or suspending Brake Adjuster License Number BA 111627, issued to James Myong Hwan Rho, also known as Myong Rho;

8. Revoking or suspending any additional license issued under Articles 5 and 6 of Chapter 20.3 of the Business and Professions Code in the name of James Myong

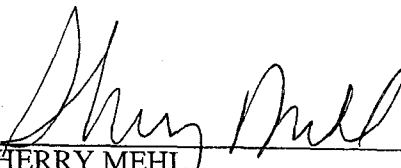
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1 Hwan Rho, also known as Myong Rho, including, but not limited to, Official Lamp Station
2 License Number LS 156930 and Lamp Adjuster License Number LA 111627;

3 9. Ordering Respondent James Myong Hwan Rho, also known as Myong
4 Rho, individually, and as owner of Rho's Auto Repair, to pay the Director of Consumer Affairs
5 the reasonable costs of the investigation and enforcement of this case, pursuant to Business and
6 Professions Code section 125.3;

7 10. Taking such other and further action as deemed necessary and proper.

8 DATED: 7/7/08.

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10 
11 SHERRY MEHL
12 Chief
13 Bureau of Automotive Repair
14 Department of Consumer Affairs
15 State of California

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27 Complainant